IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 1033 of 2006.

Reserved on: 28.5.2007.

Decided on: 20.07.2007.

H.P. State Cooperative Marketing and Consumers Federation Ltd.

… … … Petitioner.

Versus

State of H.P. and others.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the Petitioners:	**Mr. Kapil Dev Sood, Advocate.**
For Respondents No.1 & 2:	**Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals.**
For Respondent No.3:	**Mr. D.P. Chauhan, Advocate.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that departmental proceedings were initiated against respondent No.3 (hereinafter referred to as the workman for convenience sake). The memorandum was issued to him on 18th August, 2000 alongwith statement of articles of charges. The main charge against him was that he was deployed on vehicle No. HP-07-4976 for transportation of fertilizer to Jeori on 24.6.2000 and

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Whether reporters of local papers may be allowed to see the judgment? Yes.

while coming back from Jeori to Shimla on 25.6.2000 he parked the vehicle beyond one Km. from Theog towards Narkanda side and stepped down from the truck without using the hand brakes and gutka as a result whereof the truck rolled down in the Gorge. He was accordingly charged with negligence, lack of devotion to duties and causing loss to the federation. The workman had filed reply to the memorandum on 25.8.2000. He had denied charges levelled against him in his reply and had categorically stated therein that he had taken all the necessary precautions at the time of parking the truck. The Inquiry Officer after completing the inquiry had submitted the enquiry report dated 3.7.2002 to the disciplinary authority. The Inquiry Officer had come to the conclusion that though the defects in the vehicles could not be ruled out, but the workman had stepped down from the vehicle without completion of basic procedure, that is, he should not have left the vehicle till the gutka or stone was placed in front of the tyres. The Inquiry Officer had held the workman responsible for the accident of the vehicle. The memorandum was issued to the workman on 6th July, 2002 calling upon him to file representation against the proposed penalty of dismissal from service. The copy of the enquiry report was also enclosed with the memorandum, dated 6.7.2002. The workman had made a representation against the memorandum dated 6.7.2002 and his stand was that the inquiry was not held in accordance with law. He had mentioned in his representation that the F.I.R. was never produced as evidence during the course of inquiry and the same could not be relied upon

by the Inquiry Officer without permitting him to contradict the contents of the FIR. The disciplinary authority had imposed the penalty of stoppage of two annual increments with cumulative effect vide office order dated 13.8.2002. The workman preferred an appeal before the Chairman against the imposition of penalty dated 13.8.2002. The appeal was rejected by the Appellate Authority on 14.7.2003. The workman preferred reference under Section 72(1)(b) of the H.P. Cooperative Societies Act, 1968 against the order dated 14.7.2003 passed by the Managing Director. The petitioner-Federation had filed reply to the arbitration reference under Section 72(1)(b) of the H.P. Cooperative Societies Act, 1968. The Deputy Registrar (Consumer) permitted the workman to file revision petition before the competent authority vide order dated 7.11.2003. The workman preferred a revision before the Registrar, Cooperative Societies to which reply was filed by the petitioner-Federation. The Additional Registrar (Monitoring), Cooperative Societies, H.P. had toned down the punishment to censure and period of suspension was ordered to be treated as duty period as per law vide order dated 7.4.2005. The petitioner-Federation filed a review petition under Section 94 of the H.P. Cooperative Societies Act, 1968 against the order dated 7.4.2005, but the same was rejected by the Principal Secretary (Cooperation) to the Government of Himachal Pradesh on 30th July, 2005.

Mr. Kapil Dev Sood had strenuously argued that the orders dated 7.4.2005 and 30th July, 2005 are not sustainable in the eyes

of law. Mr. D.P. Chauhan had supported the orders dated 7.4.2005 and 30th July, 2005.

I have heard the parties and gone through the record carefully.

The scenario which emerges from the pleadings of the partes as discussed herein above is that the disciplinary proceedings were initiated against the workman. He had filed reply to the memorandum issued to him. The Inquiry Officer had submitted the enquiry report dated 3.7.2002 to the disciplinary authority. The workman was called upon to file reply/ representation to the memorandum dated 6.7.2002 against the proposed penalty of dismissal. The copy of enquiry report was furnished for the first time to the workman alongwith the memorandum dated 6.7.2002. It is the settled-law that the copy of the enquiry report is to be furnished to an employee before the disciplinary authority makes its mind to impose any of the penalties. The basic concept of supplying the copy of enquiry report to an employee is to enable him to point out deficiencies, short-comings and procedural irregularities while conducting the inquiry. This position of law is no more res-integra in view of the law laid down in ***Managing Director, ECIL, Hyderabad and others versus B. Karunakar and others, (1993) 4 SCC 727.*** Their Lordships of the Hon'ble Supreme Court have held as under:-

> **"The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the**

first stage and also a principle of natural justice is that the findings recorded by the enquiry officer from an important material before the disciplinary which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent

> **employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."**

This court is of the opinion that the workman should have been supplied with the copy of enquiry report and failure to do so has seriously prejudiced the workman. The penalty of stoppage of two annual increments with cumulative effect was imposed upon the workman vide office order dated 13.08.2002. The workman had preferred an appeal which had been rejected by the appellate authority without a speaking order on 14.7.2003. The order passed by appellate authority must be a speaking order and the grounds mentioned in the memorandum of appeal preferred by an individual have to be considered by the appellate authority.

The Apex Court in ***Narinder Mohan Arya vesus United India Insurance Co. Ltd. and others, (2006) 4 SCC 713*** has held as under:-

"An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regard the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.

In Apparel Export Promotion Council V. A.K. Chopra which has heavily been relied upon by Mr. Gupta, this Court stated: (SCC p. 770, para 16)

> **"16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities."**
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> **(emphasis supplied)**

The Appellate Authority, therefore, could not ignore to exercise the said power.

The order of the Appellate Authority demonstrates total non-application of mind. The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression "consider' is of some significance. In the context of the Rules, the Appellate Authority

was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive.

In R.P. Bhatt V. Union of India this Court opined: (SCC p. 654, paras 4-5)

> **"4. The word 'consider' in Rule 27(2) implies 'due application of mind'. It is clear upon the terms of Rule 27(2) that the Appellate Authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the Appellate Authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.**
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> **"5. There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions**

of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (c) of Rule 27(2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside."

In para 13 of the memorial the appellant at the first opportunity raised a contention that the order of the Appellate Authority was not a speaking order at all, besides drawing the attention of the Chairman-cum-Managing Director to the subsequent event namely the judgment and decree passed by the civil court. The said authority again did not apply its mind while passing his order dated 31-3-1981. When such a contention was raised, it was obligatory on the part of the Chairman-cum-Managing Director while exercising its statutory jurisdiction to show that he had applied his mind to the contentions raised. Such application of mind on his part is not apparent from the order. The departmental proceedings are quasi criminal in nature."

The workman had been insisting throughout before the authorities that the inquiry had not been held in accordance with law. The Additional Registrar (Monitoring) had framed the

following issues for deciding the revision preferred by the workman:-

"(i) Whether the vehicle had mechanical problem of self starting?

(ii) Whether statement of eyewitness was recorded and relied upon without affording opportunity of cross-examination of the eyewitness by the applicant.

(iii) Whether it was possible for Applicant/Petitioner to apply support (Gutka) to tyres before getting down from vehicle to answer the call of nature and apply brake while the vehicle was in motion on its own.

(iv) Whether findings of the enquiry officer are based on the statements of eyewitnesses and witness of technical expert?

(v) Whether period of suspension has rightly been treated as time spent on leave?

(vi) Relief.

Issue No.(i) Yes

Issue No.(ii) Yes

Issue No.(iii) partly 'Yes' and partly 'No'

Issue No.(iv) No.

Issue No.(v) No.

Issue No.(vi) As per operative part of the order."

The Additional Registrar (Monitoring) had come to the conclusion that the vehicle had self starting problem which had not

been removed by the authorised mechanic. The workman had not been afforded the opportunity to cross-examine Shri Partap Chauhan during the course of enquiry. Shri Rama Nand was not listed in the list of prosecution witnesses. The Additional Registrar (Monitoring) after taking into consideration the statement of PW-2, PW-3 and DW-1 had given findings that the truck started moving on its own due to technical fault. The finding recorded by the Additional Registrar (Monitoring) cannot be faulted with. The Principal Secretary (Cooperation) to the Government of Himachal Pradesh had up-held the order passed by the Additional Registrar (Monitoring), Cooperative Societies. The order passed by the Principal Secretary (Cooperation) is within jurisdiction and there is no procedural irregularity in his order dated 30th July, 2005.

The upshot of the above discussion is that (i) the workman was required to be supplied with the copy of enquiry report dated 3.7.2002 before issuance of memorandum dated 6.7.2002, (ii) the order passed by the appellate authority is not a speaking order, (iii) the order passed by the Additional Registrar (Monitoring), Cooperative Societies is a reasoned order, and (iv) there is no jurisdictional error or procedural irregularity in the order passed by the Principal Secretary (Cooperation) to the Government of Himachal Pradesh on 30th July, 2005.

Consequently there is no merit in the petition and the same is accordingly dismissed with no order as to costs.

July 20, 2007. **(Rajiv Sharma), Judge.**
(sck).